MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2016/2017

BBL 3614 – COMPANY LAW AND SECRETARIAL PRACTICE

(All sections / Groups)

22 October 2016
02:30 P.M. – 05:30 P.M.
(3 Hours)

INSTRUCTIONS TO STUDENTS

1. This question paper consists of FOUR (4) printed pages (including cover page) with FOUR (4) Questions.

2. Answer **ALL** questions. All questions carry equal marks and the distribution of the marks for each question is given.

3. Please write your answers in the answer booklet provided.

QUESTION 1 (25 MARKS)

(a) Harry was the Chairman and Managing Director of Sunshine Sdn Bhd, a company he founded and in which he owned 60% of the shares. Harry was the main driving force behind the success of the company for over 20 years. He has a reputation for being an extraordinary business genius and a dynamic leader among the rest of the Board.

Harry is also the owner and principal shareholder of Holiday Sdn. Bhd. a company that provides a wide range of transport to Sunshine Sdn. Bhd. In 2015, Harry arranged for a RM 100,000.00 unsecured loan from Sunshine Sdn. Bhd. to Holiday Sdn. Bhd.

Emma, the finance director co-signed the documents and the cheque releasing the funds. Hammonie and Sofia, the other Board members, were told about the loan but were not given an opportunity to vote on the matter. No provision was made as to how the loan was to be repaid and the debt still remains outstanding.

At the end of 2015, Sunshine Sdn. Bhd. began to encounter financial difficulties as the global economy impacted the travel industry. Harry, in his usual dynamic way, persuaded the Board to buy a used space shuttle from Rainbow Sdn. Bhd., a company in which Harry's wife, Maggie is the principal shareholder, for RM 7 million with a view of introducing space travel to Malaysians.

Harry convinced the Board of the immense earning potential this could generate, and the Board, trusting in Harry's judgment, agreed to proceed with the transaction. Sunshine Sdn. Bhd. was recently acquired by Holidaze Worldwide Sdn. Bhd. which has now discovered the above transactions.

Advise Holidaze Worldwide Sdn. Bhd. about the claims they have against Harry, Emma, Hammonie and Sofia and if there are any defences available.

(20 Marks)

(b) Hafidz, Ethan and Mahmood are the shareholders and directors of Sunshine Sdn Bhd. Mahmood holds 28 percent of the shares and Hafidz and Ethan each holds 36 percent. Recently, the relationship between Mahmood and the rest broke down. Mahmood has moved to Sabah and is no longer actively involved in the company's management. Hafidz and Ethan called a general meeting to be held at Hafidz's beach house in Kuantan one day before the Merdeka Holiday, at which they proposed a resolution to remove Mahmood from the board. The notice of meeting was sent to Mahmood but was delayed in the post and did not reach him until one day before the meeting. At this late stage, he was unable to book a plane ticket from Sabah to Kuantan because of the holiday season. So he could not attend the meeting. Advise Mahmood.

(5 Marks)

Continued...

QUESTION 2 (25 MARKS)

(a) "It is an elementary principle that A cannot, as a general rule bring an action against B to recover damages or secure other relief against B on behalf of C for an injury done by B to C. C is the proper plaintiff because C is the party injured, and therefore, the person in whom the cause of action is vested. This is sometimes referred to as the rule in *Foss v. Harbottle* (1843)2 Hare 461." Discuss the proper plaintiff rule and the general exceptions to this rule.

(15 Marks)

(b) Dorimon Sdn Bhd has an issued capital of RM3,000,000, made up of 2,000,000 RM1.00 ordinary and 1,000,000 RM1.00 preference shares. Over the past few years the company has made huge profits. The company is contemplating reducing its capital by paying off preference shareholders.

Advise Dorimon Sdn Bhd as to:

(i) How a company may reduce its capital under the *Companies Act 1965*, and in particular whether the proposed reduction would be lawful.

(5 Marks)

(ii) The protection, if any, afforded to creditors who might likely to be affected by the reduction.

(5 Marks)

QUESTION 3 (25 MARKS)

(a) Amirul is an auditor of Bangun Sdn Bhd. While carrying out some audit work on the company's account, he discovered some irregularities with the company's cheques, invoices and company's accounting documents. Amirul then sought explanation form the officer in charge of preparing the documents. The officer concerned told Amirul that the errors should not be taken seriously. When Amirul asked further, the officer refused to cooperate. Amirul was of the opinion that the matter was very serious and he suspected that the irregularities were done by a few of the company's officers at the upper level of management. Amirul however, refused to disclose the matter in the report and decided to verify the account as true and fair for fear that his employment contract will not be renewed by the company in future if he does so.

Based on the above scenario, discuss the duties and liabilities of Amirul as an auditor of Bangun Sdn Bhd.

(20 Marks)

(b) Explain the qualifications of company secretary in Malaysia.

(5 Marks)

Continued...

QUESTION 4 (25 MARKS)

(a) "A company secretary is a much more important person nowadays than he was in 1887. He is an officer of the company with extensive duties and responsibilities" - per Lord Denning MR in Panorama Developments (Guilford) Ltd v. Fidelis Furnishing Fabrics Ltd [1971] 2 QB 711-716.

Discuss the ostensible authority of a company secretary.

(6 Marks)

(b) Explain the procedure for application of company secretary license in Malaysia.

(4 Marks)

(c) Discuss the ethic codes for company secretary as stated in the Company Secretary's Code of Ethics.

(15 Marks)

End of Paper